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THE LAW OUT WEST



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October 24, 2005

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**ECEJ-TEP**

VIA HAND DELIVERY

~~Matthew Cohn, Esq.  
United States Environmental Protection Agency  
Region 8  
999 18th Street, Suite 300  
Denver, Colorado 80202~~

**Re: Vermiculite Intermountain Superfund Site**

Dear Matt:

I appreciated you and Kelcey taking the time to meet with me on the 19th, and to discuss the Vermiculite Intermountain Superfund Site ("Site"). Obviously, we have some significant differences with EPA and some of the other PRPs regarding the relative responsibility of the Van Cott Trust, particularly in comparison to some of the other parties involved in this Site. But, as I mentioned, we are planning to lay out those points in greater detail in the letter we will submit to you in the near future.

In the meantime, I am doing all that I can to quickly get up to speed on the relevant facts and circumstances, and I greatly appreciate your and Kelcey's willingness to provide me non-privileged documents helpful to that goal. At this time, the specific documents I am most interested in are the following:

1. Any documentation relating to or bearing on the operation of the Site during the period 1941-1985. I understand from our conversation that this documentation is sparse, and may be limited to an incomplete set of shipping invoices. Even so, I would like to review what's available, as well as the summaries EPA has prepared, if possible. I would be happy to come to your offices at a convenient time for this purpose, if that would speed up matters.

2. The 104e responses from any of the other PRPs involved in the Site. My understanding is that, at the moment, the only other party who submitted a 104e response other than the Van Cott Trust was La Quinta, but that an additional 104e request will be going out to Frank Edwards within the next few weeks. Assuming EPA has not sent 104e requests to PacifiCorp and any other PRPs, we urge EPA do so as soon as possible. All PRPs should be under the same legal obligation to provide relevant information.

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3. If you have received any submissions from PacifiCorp **outside** the 104e process, I would like to review those. Again, I would be happy to come to your offices at a convenient time for this purpose.

4. When it becomes available, as we discussed, I'd like a copy of the DVD you are preparing of the Site Administrative Record.

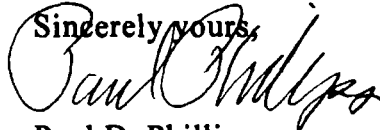
5. I understand you consider the owner of the Print Shop to be a contiguous property owner. I would like a copy of the Environmental Site Assessment or other documentation you are relying on for that conclusion.

6. I have one further question: the Trust received a July 27, 2005, letter from EPA titled "Notice of Potential Liability for Removal Action," referencing EPA expended costs of approximately \$2.3 M. No other PRPs were shown as cc's or addressees of this Notification. We assume a similar letter was sent to the other PRPs, but would like confirmation whether or not this was done.

7. A key issue here will be the application of EPA's Orphan Share Policy. I understood from our meeting that you are not intending to apply the Orphan Share Policy in this case, on the grounds that PacifiCorp and the Trust, as lessors to the party conducting the operations, were "affiliated" in a way that would exclude application of the Orphan Share Policy. Can you direct me to any EPA guidance documents or policy statements that address this interpretation of the "affiliated" concept?

Again, Matt, I appreciated the opportunity to talk to you. We agree with you that, all things considered, it would be preferable to settle instead of litigate this rather complex situation, assuming a settlement is possible, but we need to make sure such a settlement is fair to the Trust and the individuals relying upon the Trust for their retirements. Your help in providing the information we have requested will assist in moving matters forward. We look forward to working with you in the future.

Sincerely yours,



Paul D. Phillips  
of Holland & Hart LLP

PDP:dc

cc: ✓ Kelcey Land  
Michael Keller, Esq.  
Brian W. Burnett, Esq.  
Jeffrey R. Becker, Esq.

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